

1 Andrew Leibnitz (State Bar No. 184723)
2 aleibnitz@fbm.com
3 FARELLA BRAUN & MARTEL LLP
4 235 Montgomery Street, 17th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 954-4400
7 Facsimile: (415) 954-4480

8 David W. Harlan (*pro hac vice*)
9 Richard L. Brophy (proposed *pro hac vice*)
10 dkharlan@armstrongteasdale.com
11 rbrophy@armstrongteasdale.com
12 ARMSTRONG TEASDALE LLP
13 7700 Forsyth Blvd. Suite 1800
14 St. Louis, MO 63105
15 Telephone: (314) 621-5070
16 Facsimile: (314) 621-5065

17 Attorneys for Plaintiff
18 CAVE CONSULTING GROUP, LLC

19 UNITED STATES DISTRICT COURT
20
21 NORTHERN DISTRICT OF CALIFORNIA

22 CAVE CONSULTING GROUP, LLC,

23 Plaintiff,

24 vs.

25 INGENIX, INC.,

26 Defendant.

Case No. 5:11-cv-0469

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND
DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY**

27 Plaintiff Cave Consulting Group, LLC ("CCGroup"), for its First Amended Complaint
28 against defendant Ingenix, Inc. ("Ingenix"), alleges as follows:

Parties

1. Plaintiff CCGroup is a California limited liability company with a principal place
of business in San Mateo, California. Plaintiff CCGroup is the owner by assignment of all right,
title, and interest in United States Patent No. 7,739,126.

2. Defendant Ingenix is a Delaware corporation with its principle place of business in

1 Minnetonka, Minnesota. Ingenix is registered to do business and is doing business in the State of
2 California.

3 Jurisdiction and Venue

4 3. The claims alleged below are brought under the Patent Laws of the United States,
5 35 U.S.C. § 271 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

6 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331 and 1338(a).

8 5. Defendant is subject to personal jurisdiction in this district because it is a Delaware
9 corporation registered to do business in California and has an office in San Francisco, California.
10 Moreover, Ingenix's wrongful activities occurred and continue to occur in this district. Plaintiff
11 CCGroup is informed and believes, and on that basis alleges, that at least the accused products
12 described below have been advertised, marketed, promoted, offered for sale, and/or sold by
13 Ingenix in this district.

14 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c)
15 and § 1400(b), in that a substantial part of the actions, statements, and threats giving rise to the
16 claims took place here and the defendant is subject to personal jurisdiction here.

17 Patents-In-Suit

18 7. On June 15, 2010, the United States Patent and Trademark Office duly and legally
19 issued the '126 patent, entitled "Method, System, and Computer Program Products for Physician
20 Efficiency Measurement and Patient Health Risk Stratification." The '126 patent was duly and
21 properly assigned to CCGroup and remains in full force and effect. A copy of the '126 patent is
22 attached hereto as Exhibit A.

23 8. Ingenix owns all right, title and interest in U.S. Patent No. 7,222,079, entitled
24 "Method and System for Generating Statistically-Based Medical Provider Utilization Profiles,"
25 which was issued on May 22, 2007. A copy of the '079 Patent is attached as Exhibit B.

26 9. Ingenix owns all right, title and interest in U.S. Patent No. 7,774,252, entitled
27 "Method and System for Generating Statistically-Based Medical Provider Utilization Profiles,"
28 which was issued on August 10, 2010. A copy of the '252 Patent is attached as Exhibit C.

10. Ingenix owns all right, title and interest in U.S. Patent No. 5,835,897, entitled “Computer-Implemented Method for Profiling Medical Claims,” which was issued on November 10, 1998. A copy of the ‘897 Patent is attached as Exhibit D.

11. Ingenix owns all right, title and interest in U.S. Patent No. 6,370,511, entitled “Computer-Implemented Method for Profiling Medical Claims,” which was issued on April 9, 2002. A copy of the ‘511 Patent is attached as Exhibit E.

12. Ingenix owns all right, title and interest in U.S. Patent No. 7,620,560, entitled “Computer-Implemented Method for Profiling Medical Claims,” which was issued on November 17, 2009. A copy of the ‘560 Patent is attached as Exhibit F.

13. Ingenix owns all right, title and interest in U.S. Patent No. 7,774,216, entitled “Computer-Implemented Method for Profiling Medical Claims,” which was issued on August 10, 2010. A copy of the ‘216 Patent is attached as Exhibit G.

14. Ingenix owns all right, title and interest in U.S. Patent No. 7,725,333, entitled “Cluster of Correlated Medical Claims In an Episode Treatment Group,” which was issued on May 25, 2010. A copy of the ‘333 Patent is attached as Exhibit H.

Ingenix’s Infringement of U.S. Patent No. 7,739,126

15. CCGroup repeats and incorporates by reference the allegations contained in Paragraphs 1-14 above as if fully set forth herein.

16. CCGroup’s business includes developing and marketing sophisticated methods and systems used to evaluate patterns of healthcare delivery and measure the efficiency of healthcare providers. CCGroup has developed such a product, known as the CCGroup Marketbasket System™, which includes systems and methods encompassed by claims of the ‘126 patent.

17. CCGroup has licensed its CCGroup Marketbasket System™ to numerous entities in the United States.

18. Ingenix’s business includes licensing methods and systems used to evaluate patterns of healthcare delivery and measure the efficiency of healthcare providers.

19. Upon information and belief, Ingenix, in direct competition with CCGroup, has

1 licensed provider efficiency measurement products that are encompassed by one or more claims
2 of the '126 patent.

3 **Ingenix's Patent Enforcement Activities Against CCGroup**

4 20. CCGroup repeats and incorporates by reference the allegations contained in
5 Paragraphs 1-19 above as if fully set forth herein.

6 21. On January 11, 2011, Ingenix filed suit against CCGroup in the United States
7 District Court for the District of Minnesota. In that lawsuit, Ingenix alleged that CCGroup
8 infringes the '079, '252, '297, '511, '560, '216, and '333 patents identified above. A docket
9 report from that case, listing Ingenix's Complaint, is attached hereto as Exhibit I.

10 22. In its Complaint, Ingenix asserted that:

11 "CCG makes, uses, offers and sells analytical tools used to evaluate
12 health care delivery efficiency, including but not limited to the CCG
13 Marketbasket System. The CCG Marketbasket System is a software
14 product. The core component of the CCG Marketbasket System is the
15 CCG "Grouper," which groups medical claim data for further analysis.
16 CCG infringes one or more claims each of the '079, '252, '897, '522,
17 '560, '216, and '333 Patents by making, using, offering or selling at
18 least the Marketbasket System.

19 23. Ingenix never served its Complaint. Instead, on June 20, 2011, after months of
20 discussion between the parties, Ingenix voluntarily dismissed its lawsuit without prejudice. That
21 voluntary dismissal is also listed on the docket report attached hereto as Exhibit I.

22 24. Despite this voluntary dismissal, Ingenix refuses, as requested, to provide
23 CCGroup with assurances that it will not allege infringement of those same patents against
24 CCGroup in the future.

25 **COUNT I**
26 **Infringement of U.S. Patent No. 7,739,126**

27 25. CCGroup repeats and incorporates by reference the allegations contained in
28 Paragraphs 1-24 above as if fully set forth herein.

26 26. Ingenix has infringed, contributed to the infringement, and/or induced the
27 infringement of one or more claims of the '126 patent by making, using, selling, or offering to

1 sell at least its provider efficiency measurement products. Specifically, Ingenix's provider
 2 efficiency measurement products meet all of the limitations of at least Claims 1 and 22 of the
 3 '126 patent.

4 27. Upon information and belief, Ingenix infringing acts will continue unless enjoined
 5 by the Court.

6 28. As a direct and proximate result of Ingenix's conduct, CCGroup has suffered
 7 damages in an amount to be proven at trial.

8 29. CCGroup is without an adequate remedy at law and will be irreparably injured if
 9 the Court does not enter an order preliminarily and/or permanently enjoining Ingenix from
 10 committing the acts of infringement complained of herein.

11 **COUNT II**

12 **Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 7,222,079**

13 30. CCGroup repeats and incorporates by reference the allegations contained in
 14 Paragraphs 1-29 above as if fully set forth herein.

15 31. CCGroup continues to sell and license the software and methods of the CCGroup
 16 Marketbasket System™.

17 32. Based on Ingenix's allegations of infringement of the '079 Patent and its refusal to
 18 provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future,
 19 CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '079
 20 Patent.

21 33. Although CCGroup's investigation of the '079 Patent is ongoing, on information
 22 and belief, CCGroup asserts that the claims of the '079 Patent are invalid for failure to satisfy the
 23 conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and
 24 120.

25 34. For the reasons set forth herein, a valid and justifiable controversy exists between
 26 CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and
 27 invalidity of the '079 Patent.
 28

1 35. CCGroup seeks a declaration from this Court that it has not infringed and is not
2 now infringing the '079 Patent.

3 36. CCGroup also seeks a declaration from this Court that the claims of the '079
4 Patent are invalid.

5
6 **COUNT III**
Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 7,774,252

7 37. CCGroup repeats and incorporates by reference the allegations contained in
8 Paragraphs 1-36 above as if fully set forth herein.

9 38. Based on Ingenix's allegations of infringement of the '252 Patent and its refusal to
10 provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future,
11 CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '252
12 Patent.

13 39. Although CCGroup's investigation of the '252 Patent is ongoing, on information
14 and belief, CCGroup asserts that the claims of the '252 Patent are invalid for failure to satisfy the
15 conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and
16 120.

17 40. For the reasons set forth herein, a valid and justifiable controversy exists between
18 CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and
19 invalidity of the '252 Patent.

20 41. CCGroup seeks a declaration from this Court that it has not infringed and is not
21 now infringing the '252 Patent.

22 42. CCGroup also seeks a declaration from this Court that the claims of the '252
23 Patent are invalid.

24
25 **COUNT IV**
Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 5,835,897

26 43. CCGroup repeats and incorporates by reference the allegations contained in
27 Paragraphs 1-42 above as if fully set forth herein.

44. Based on Ingenix's allegations of infringement of the '897 Patent and its refusal to provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future, CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '897 Patent.

45. Although CCGroup's investigation of the '897 Patent is ongoing, on information and belief, CCGroup asserts that the claims of the '897 Patent are invalid for failure to satisfy the conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and 120.

46. For the reasons set forth herein, a valid and justifiable controversy exists between CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and invalidity of the '897 Patent.

47. CCGroup seeks a declaration from this Court that it has not infringed and is not now infringing the '897 Patent.

48. CCGroup also seeks a declaration from this Court that the claims of the '897 Patent are invalid.

COUNT V

Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 6,370,511

49. CCGroup repeats and incorporates by reference the allegations contained in Paragraphs 1-48 above as if fully set forth herein.

50. Based on Ingenix's allegations of infringement of the '511 Patent and its refusal to provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future, CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '511 Patent.

51. Although CCGroup's investigation of the '511 Patent is ongoing, on information and belief, CCGroup asserts that the claims of the '511 Patent are invalid for failure to satisfy the conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and 120.

52. For the reasons set forth herein, a valid and justifiable controversy exists between CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and invalidity of the '511 Patent.

53. CCGroup seeks a declaration from this Court that it has not infringed and is not now infringing the '511 Patent.

54. CCGroup also seeks a declaration from this Court that the claims of the '511 Patent are invalid.

COUNT VI

Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 7,620,560

55. CCGroup repeats and incorporates by reference the allegations contained in Paragraphs 1-54 above as if fully set forth herein.

56. Based on Ingenix's allegations of infringement of the '560 Patent and its refusal to provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future, CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '560 Patent.

57. Although CCGroup's investigation of the '560 Patent is ongoing, on information and belief, CCGroup asserts that the claims of the '560 Patent are invalid for failure to satisfy the conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and 120.

58. For the reasons set forth herein, a valid and justifiable controversy exists between CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and invalidity of the '560 Patent.

59. CCGroup seeks a declaration from this Court that it has not infringed and is not now infringing the '560 Patent.

60. CCGroup also seeks a declaration from this Court that the claims of the '560 Patent are invalid.

COUNT VII

Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 7,774,216

61. CCGroup repeats and incorporates by reference the allegations contained in Paragraphs 1-60 above as if fully set forth herein.

62. Based on Ingenix's allegations of infringement of the '216 Patent and its refusal to provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future, CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '216 Patent.

63. Although CCGroup's investigation of the '216 Patent is ongoing, on information and belief, CCGroup asserts that the claims of the '216 Patent are invalid for failure to satisfy the conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and 120.

64. For the reasons set forth herein, a valid and justifiable controversy exists between CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and invalidity of the '216 Patent.

65. CCGroup seeks a declaration from this Court that it has not infringed and is not now infringing the '216 Patent.

66. CCGroup also seeks a declaration from this Court that the claims of the '216 Patent are invalid.

COUNT VIII

Declaratory Judgment of Non-Infringement and/or Invalidity of U.S. Patent No. 7,725,333

67. CCGroup repeats and incorporates by reference the allegations contained in Paragraphs 1-66 above as if fully set forth herein.

68. Based on Ingenix's allegations of infringement of the '333 Patent and its refusal to provide assurances to CCGroup that it will not initiate another infringement lawsuit in the future, CCGroup has a reasonable apprehension that Ingenix will file suit against it to enforce the '333 Patent.

69. Although CCGroup's investigation of the '333 Patent is ongoing, on information and belief, CCGroup asserts that the claims of the '216 Patent are invalid for failure to satisfy the conditions and requirements for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, 112, and 120.

70. For the reasons set forth herein, a valid and justifiable controversy exists between CCGroup and Ingenix within the meaning of 28 U.S.C. § 2201 regarding infringement and invalidity of the '333 Patent.

71. CCGroup seeks a declaration from this Court that it has not infringed and is not now infringing the '333 Patent.

72. CCGroup also seeks a declaration from this Court that the claims of the '333 Patent are invalid.

Prayer for Relief

WHEREFORE, CCGroup prays that the Court enter judgment:

A. Permanently enjoining Ingenix and each of its respective officers, agents, servants, employees, and attorneys, and all of those persons in active concert or participation with them from further infringing the '126 Patent;

B. Awarding CCGroup damages for patent infringement in an amount to be determined, including pre- and post-judgment interest;

C. Awarding CCGroup its costs and attorneys fees pursuant to 35 U.S.C. § 285;

D. Declaring that CCGroup has not infringed, induced others to infringe, or contributed to the infringement of any of the claims of U.S. Patent No. 7,222,079;

E. Declaring that the claims of U.S. Patent No. 7, 222,079 are invalid;

F. Declaring that CCGroup has not infringed, induced others to infringe, or contributed to the infringement of any of the claims of U.S. Patent No. 7,774,252;

G. Declaring that the claims of U.S. Patent No. 7,774,252 are invalid;

H. Declaring that CCGroup has not infringed, induced others to infringe, or contributed to the infringement of any of the claims of U.S. Patent No. 5,835,897;

I. Declaring that the claims of U.S. Patent No. 5,835,897 are invalid;

1 J. Declaring that CCGroup has not infringed, induced others to infringe, or
2 contributed to the infringement of any of the claims of U.S. Patent No. 6,370,511;

3 K. Declaring that the claims of U.S. Patent No. 6,370,511 are invalid;

4 L. Declaring that CCGroup has not infringed, induced others to infringe, or
5 contributed to the infringement of any of the claims of U.S. Patent No. 7,620,560;

6 M. Declaring that the claims of U.S. Patent No. 7,620,560 are invalid;

7 N. Declaring that CCGroup has not infringed, induced others to infringe, or
8 contributed to the infringement of any of the claims of U.S. Patent No. 7,774,216;

9 O. Declaring that the claims of U.S. Patent No. 7,774,216 are invalid;

10 P. Declaring that CCGroup has not infringed, induced others to infringe, or
11 contributed to the infringement of any of the claims of U.S. Patent No. 7,725,333;

12 Q. Declaring that the claims of U.S. Patent No. 7,725,333 are invalid;

13 R. Awarding CCGroup such other and further relief as the Court finds just and
14 appropriate.

15
16 Dated: July 11, 2011

FARELLA BRAUN + MARTEL LLP

17
18 By: 

Andrew Leibnitz

19
20 David W. Harlan (*pro hac vice*)
21 Richard L. Brophy (proposed *pro hac vice*)
ARMSTRONG TEASDALE LLP

22 Attorneys for Plaintiff
23 CAVE CONSULTING GROUP, LLC
24
25
26
27
28